



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 13-6

July 10, 2013

Investigation by the Department on its Own Motion to Determine whether an Agreement entered into by Verizon New England Inc., d/b/a Verizon Massachusetts is an Interconnection Agreement under 47 U.S.C. § 251 Requiring the Agreement to be filed with the Department for Approval in Accordance with 47 U.S.C. § 252

**HEARING OFFICER RULING ON XO COMMUNICATIONS SERVICES, INC.'S
PETITION TO INTERVENE**

On May 13, 2013, the Department of Telecommunications and Cable ("Department") opened an investigation upon its own motion, to determine whether an agreement between Verizon New England Inc., d/b/a Verizon Massachusetts ("Verizon MA") and an unidentified party providing for the exchange of Voice over Internet Protocol ("VoIP") traffic in Internet Protocol ("IP") format ("IP Agreement") is an "Interconnection Agreement" under 47 U.S.C. § 251. *Investigation by the Dep't of Telecomms. & Cable on its Own Motion to Determine whether an Agreement entered into by Verizon New England Inc., d/b/a Verizon Mass. is an Interconnection Agreement under 47 U.S.C. § 251 Requiring the Agreement to be filed with the Dep't for Approval in Accordance with 47 U.S.C. § 252, D.T.C. 13-6, Order Opening an Investigation, Declining to Issue an Advisory Ruling, and Denying Verizon MA's Motion to Dismiss or Stay the Proceeding* (May 13, 2013) ("Order Opening Investigation"). This proceeding has been docketed as D.T.C. 13-6, and is a formal adjudicatory proceeding conducted under G. L. c. 30A and 220 C.M.R. § 1.00 *et seq.* of the Department's Rules of Practice and Procedure.

On June 28, 2013, XO Communications Services, Inc. (“XO”) filed a petition to intervene. No participants have filed comments or oppositions to the petition. A petition to intervene must satisfy the substantive requirements of 220 C.M.R. § 1.03(1). Petitioners must establish that they are “substantively and specifically affected by the proceeding.” 220 C.M.R. § 1.03(1)(b); G. L. c. 30A § 10. The Department has broad discretion in determining whether to grant petitions to intervene. *See, e.g., Pet. of Comcast Cable Commc’ns., LLC to establish & adjust the basic service tier programming, equipment, & installation rates for the communities in Mass. served by Comcast Cable Commc’ns., LLC that are currently subject to rate regulation*, D.T.C. 12-2, *Hr’g Officer Ruling on Pet. to Intervene* (Nov. 14, 2012) (municipality was not substantively and specifically affected by Department proceeding to reconsider basic cable rates where municipality was not subject to rate regulation.); *Investigation by the Dep’t on its Own Motion into the Implementation in Mass. of the FCC’s Order Reforming the Lifeline Program*, D.T.C. 13-4, *Hr’g Officer Ruling on Pets. for Intervention, Requests for Limited Participation Status, and Motion for Admission Pro Hac Vice* (providers of service under federal Lifeline program were substantively and specifically affected by Department investigation into a federal order reforming the program). Such a determination is “based on individual facts establishing the ‘substantial and specific’ affect that the proceeding may have on the individual or entity seeking to intervene.” *Bd. of Health of Sturbridge v. Bd. of Health of Southbridge*, 461 Mass. 548, 558 (2012).

XO is a competitive telecommunications provider registered with the Department and offers telecommunications services in Massachusetts. XO Petition at 1. XO requests to intervene because it has an interest in ensuring the IP Agreement does not discriminate against it and in the Department’s determination of whether the IP subject is subject to 47 U.S.C. 252. *Id.*

at 2. XO claims that while its interests may generally be parallel to the other competitive carriers seeking to intervene in this proceeding, its interests would not be adequately represented by those parties. *Id.* The Department previously found that competitive telecommunications providers offering telecommunications services in Massachusetts may be substantively and specifically affected by this proceeding. *See Investigation by the Department on its Own Motion to Determine whether an Agreement entered into by Verizon New England Inc., d/b/a Verizon Massachusetts is an Interconnection Agreement under 47 U.S.C. § 251 Requiring the Agreement to be filed with the Department for Approval in Accordance with 47 U.S.C. § 252, D.T.C. 13-6, Hearing Officer Ruling on Petitions for Intervention, Request for Limited Participant Status, Motion for Admission Pro Hac Vice, Motion for Confidential Treatment, Non-Disclosure Agreements, and the Other Party to the Agreement* at 4-5. As such, the Department finds that XO may be substantially and specifically affected by this proceeding and the petition otherwise satisfies the requirements of 220 C.M.R. 1.03(1).

Accordingly, the Department GRANTS XO's petition to intervene in the above-referenced proceeding.

/s/ Betsy Whittey
Betsy Whittey
Hearing Officer

/s/ Michael Scott
Michael Scott
Staff Attorney, Legal Division

NOTICE OF RIGHT TO APPEAL

Under the provisions of 220 C.M.R. § 1.06(d)(3), any aggrieved party may appeal this Ruling to the Commissioner by filing a written appeal with supporting documentation within five (5) days of this Ruling. A copy of this Ruling must accompany any appeal. A written response to any appeal must be filed within two (2) days of the appeal.